

August 30, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

Re: Numbering Resource Optimization
 CC Docket No. 99-200

Specific Area Code Overlays

Connecticut Department of Public Utility Control

RM No. 9258

Codes

Massachusetts Department of Telecommunications

NSD File No. L-99-17

Code

California Public Utilities Commission and the

NSD File No. L-99-36

Dear Ms. Salas:

Enclosed please find an original and five copies of the Joint Reply Comments of the Texas Office of Public Utility Counsel and the National Association of State Utility Consumer Advocates for filing with the Commission in the above-referenced matters. Please also note that these Comments **have been filed** with the Commission **electronically**.

Please indicate your receipt of this filing on the extra copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

cc: Al McCloud, Network Services Division (E-Mail)
International Transcription Services, Inc. (1 copy)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
Numbering Resource Optimization	:	CC Docket No. 99-200
	:	
Connecticut Department of Public Utility Control	:	
Petition for Rulemaking to Amend the Commission's	:	
Rule Prohibiting Technology-Specific or	:	RM No. 9258
Service-Specific Area Code Overlays	:	
	:	
Massachusetts Department of Telecommunications	:	NSD File No. L-99-17
and Energy Petition for Waiver to Implement a	:	
Technology-Specific Overlay in the	:	
508, 617, 781, and 978 Area Codes	:	
	:	
California Public Utilities Commission and the	:	
People of the State of California Petition for	:	NSD File No. L-99-36
Waiver to Implement a Technology-Specific or	:	
Service-Specific Area Code	:	

I hereby certify that I have this day served a true copy of the foregoing document, Reply Comments, upon parties of record in this proceeding.

Dated this 30th day of August, 1999.

Respectfully submitted,

Joel H. Cheskis
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Connecticut Department of Public Utility Control Petition)	RM No. 9258
for Rulemaking to Amend the Commission's Rule Prohibiting)	
Technology-Specific or Service-Specific Area Code Overlays)	
)	
Massachusetts Department of Telecommunications and Energy)	NSD File No. L-99-17
Petition for Waiver to Implement a Technology-Specific)	
Overlay in the 508, 617, 781, and 978 Area Codes)	
)	
California Public Utilities Commission and the People of the)	NSD File No. L-99-36
State of California Petition for Waiver to Implement a)	
Technology-Specific or Service-Specific Area Code)	

JOINT REPLY COMMENTS OF

TEXAS OFFICE OF PUBLIC UTILITY COUNSEL
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Texas Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78701
(512) 936-7500/(512) 936-7520 FAX

Michael Travieso
Chair, Telecommunications Committee
NASUCA
1133 15th Street, N.W., Suite 550
Washington, D.C. 20005
(202) 727-3908/(202) 727-3911 FAX

Economic Consultants:
Lee L. Selwyn
Susan M. Baldwin
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108
(617) 227-0900/(617) 227-5535 FAX

August 30, 1999

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	iv
I. THE SCOPE OF THE CURRENT NUMBERING CRISIS	1
A. The FCC should immediately delegate authority to states to examine and to implement much-needed, overdue number optimization measures.	1
B. Although the incumbent local exchange carriers express symbolic support for number optimization measures, their persistent recitation of alleged obstacles reveals the utter transparency of their position.	2
C. The dissension reflected in the initial comments about the vast majority (if not all) of the major specific questions posed by the FCC=s NPRM underscores the need for regulatory resolution of the numbering impasse.	3
D. Delay in decision-making benefits the incumbent carriers and harms consumers both by exposing them to the costs and burdens of existing area code relief solutions and by delaying the arrival of effective competition by limiting entrants' access to numbers.	3
E. Others echo the Joint Commenters= recommendation that the FCC pursue several solutions simultaneously.	4
II. ADMINISTRATIVE MEASURES	5
A. The initial comments reflect overwhelming support for the adoption of administrative measures that will provide discipline in the administration and allocation of telephone numbers, and improve efficiency in the use of numbering resources.	5
B. The arguments that oppose state involvement and state leadership in resolving the numbering crisis lack any compelling basis for excluding states from the process of developing key administrative measures for numbering issues.	5
C. Adoption of a uniform set of definitions will standardize communications among carriers, administrators and regulators.	6

D. Carriers should demonstrate a minimum level of need in order to obtain initial NXX codes in a given region, yet more substantial demonstration of need should be required for carriers to obtain growth NXX codes.	7
E. The FCC and states should develop a policy on reserved numbers that balances legitimate consumer interest in having access to telephone numbers with the compelling need to prevent telephone number hoarding.	10
F. The efficient allocation of numbering resources depends critically upon the quality of the data that the industry submits.	14
G. Contrary to the assertions of some, detailed data should be provided to states, and the FCC should authorize states to link the assignment of NXX codes and thousands-blocks to carriers= compliance with reporting and record-keeping requirements.	15
H. Consistent with the recommendations of many commenters, the FCC should establish (and should immediately authorize states to establish) all three forms of audits that the NPRM describes.	16
III. RATE CENTER CONSOLIDATION	17
A. There is general support for the Joint Commenters= assertion that states should have final authority for Rate Center Consolidation.	17
B. Most commenters concur with the Joint Commenters that the FCC should not limit states= access to numbering optimization measures, nor should the FCC link authority for one measure to the implementation of a different measure.	18
C. SS7-based rating is not a viable alternative to NANP-based call rating.	19
D. While rate center consolidation can extend the life of a relatively new NPA, it cannot act as a substitute for other conservation measures.	20
IV. MANDATORY TEN-DIGIT DIALING	21
A. The FCC should eliminate mandatory ten-digit dialing from the list of numbering optimization measures and should no longer require it where overlays are implemented.	21

V. POOLING	24
A. Sequential number assignment is essential in order to preserve uncontaminated blocks in anticipation of thousands-block pooling.	24
B. The FCC should delegate authority to state PUCs to establish contamination levels for thousands-block pooling based upon states= assessment of the costs, benefits, and competitive impacts of the contamination threshold.	25
C. The Joint Commenters continue to oppose cost recovery for thousands-block pooling because these costs are a normal cost of doing business.	26
D. Incumbent local exchange carriers overestimate the time to implement thousands-block pooling.	27
E. The incumbent local exchange carriers exaggerate the difficulties associated with implementing UNP and underestimate the benefits to consumers.	30
F. As some have suggested, the FCC should proceed immediately to determine how to expedite the deployment of ITN.	31
G. Regulatory leadership rather than self-selected solutions should prevail.	31
VI. PRICING OPTIONS	33
A. Numbering resources should not be put up for sale.	33
VII. AREA CODE RELIEF	35
A. The FCC should allow state regulators access to service- and technology-specific overlays as a way to provide area code relief.	35
VIII. CONCLUSION	38

INTRODUCTION AND SUMMARY

The Texas Office of Public Utility Counsel (Texas OPC) represents residential and small business consumers of Texas in telephone proceedings before the Texas Public Utility commission, the Federal Communications Commission and in various state and federal courts.

The National Association of State Utility Consumer Advocates (NASUCA) is an association of 42 consumer advocate offices in 39 states and the District of Columbia. Our members are designated by laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

The Texas OPC and NASUCA, hereinafter referred to as Joint Commenters, have reviewed the initial comments submitted by parties representing a broad range of industry, regulatory and consumer/user interests relative to number resource optimization issues. With virtually no exception, service providers, both incumbent and new, wireline and wireless, have uniformly dismissed or otherwise ignored legitimate concerns of the *public* who will ultimately be required to accept, adopt and adapt to whatever numbering solutions and relief measures are ultimately established. Instead, the service provider community has focussed upon their own respective parochial interests. Incumbent carriers favor delay in adopting a variety of measures that are technically capable of being implemented immediately, such as 1,000-block pooling and unassigned number porting (UNP) where Location Routing Number (LRN) local number portability (LNP) is currently operational. Wireless carriers, who have been successful in deferring or exempting their participation in LRN LNP, nevertheless demand that they be permitted to remain in the traditional geographic NPAs, even though their non-participation in LNP undermines the potential effectiveness of the various forms of number pooling. No service provider appears to have even considered, let alone offered to absorb, any of the substantial out-of-pocket costs and other burdens that frequent numbering changes impose upon the public.

If the Commission is not prepared to act quickly and permit immediate implementation of pooling, UNP, specialized overlays and the other solutions that state commissions are anxious to pursue in the hopes of avoiding further area code and dialing pattern changes, it should immediately provide the states with interim authority to pursue these measures pending the final outcome of this proceeding. Delay eliminates and diminishes the potential effectiveness of potential solutions, favors incumbents over entrants, and may ultimately force expansion of the NANP, something that should be entirely avoidable if effective measures are taken now.

Reply Comments of the Texas Office of Public Counsel and NASUCA

I. THE SCOPE OF THE CURRENT NUMBERING CRISIS

A. The FCC should immediately delegate authority to states to examine and to implement much-needed, overdue number optimization measures.

In their Initial Comments, the Joint Commenters emphasized the urgent nature of the present numbering crisis, a concern that was shared by other commenters as well. MediaOne, for example, states that the area code exhaust problem *A*has reached crisis proportions,¹ thus necessitating *A*immediate action.² The Joint Commenters cautioned the Commission that continued and protracted delay in converging upon nationally uniform number resource optimization solutions could moot or at least severely diminish the potential benefits that individual measures might otherwise provide. Every day that passes sees additional numbers being assigned to customers, additional NXX codes being assigned to service providers, and additional NPAs reaching exhaust and requiring relief. Every day that passes brings us that much closer to the immensely costly and disruptive possibility of NANP exhaust. And every day that passes works to diminish the potential effectiveness of whatever number resource optimization measures the Commission may ultimately adopt. Nothing offered in initial comments by the incumbent wireline and wireless service providers who persist in supporting further delay in adopting such potentially beneficial measures as 1,000-block pooling, unassigned number porting and overlay NPAs for non-LNP-capable service providers justifies the continued inaction that they recommend. The trade-off between creation of some future uniform FCC-mandated number resource management paradigm and the kind of immediate and fully implementable measures that state commissions seek to implement *now* clearly favors action over inaction.

Except for state-initiated solutions that might fundamentally undermine the structure of the NANP itself, states should be permitted to pursue pooling, UNP, overlays for non-LNP services, and dialing protocols that are consistent with the interests and needs of *consumers*. As we show in the reply comments that follow, none of the parties promoting retention of the *status quo* offer any demonstration that some ultimate federally-mandated set of solutions would be superior in any material respect to the immediate and affirmative solutions that many state commissions are prepared to implement now. Accordingly, the Joint Commenters urge the Commission to give states the interim authority to proceed with the solutions that are technically capable of immediate

1. Comments of MediaOne Group, Inc. (MediaOne), at 4.

implementation pending the ultimate adoption of an appropriate combination of state and federal responsibility for managing the nation's numbering resources.

B. Although the incumbent local exchange carriers express symbolic support for number optimization measures, their persistent recitation of alleged obstacles reveals the utter transparency of their position.

Not surprisingly, not a single commenter opposes taking steps to improve the utilization of the nation's numbering resources. However, as we demonstrate in more detail in these reply comments, the incumbent carriers, although expressing general support for the goals set forth in the NPRM, propose implementation timetables that are drawn out and mechanisms that perpetuate their incumbency advantages, and exaggerate difficulties, rather than identifying solutions. The timetable proposed by ILECs for number pooling implementation is one such example. Most of the ILECs profess to support number pooling, in some form, but their time estimates for implementation vastly exceed those of other industry members. Bell Atlantic asserts that pooling could be achieved within two years.² Ameritech claims that the industry needs another year and a half for development and testing before implementation of thousands-block pooling could begin.³ The wireless carriers have already carved out a multi-year extension on the LNP compliance that is necessary for their participation in pooling, and (given their track record of persistent delay in implementing LNP) there is no assurance that even the current November 2002 target date will be achieved, if in fact wireless LNP ever arrives at all. New entrants, however, suggest time frames of less than a year. MediaOne (until recently an affiliate of an RBOC) now refers to a ten-month time frame,⁴ MCI WorldCom refers to a nine-month initial deployment.⁵

2. Comments of Bell Atlantic (Bell Atlantic), at 2.

3. Comments of Ameritech (Ameritech), at 43.

4. MediaOne, at footnote 43.

5. Comments of MCI WorldCom (MCI WorldCom), at 13.

Number pooling requires LRN LNP, and LRN LNP has now been implemented in areas serving more than 60% of all ILEC customers.⁶ The ILECs have had no difficulty in moving forward with imposing some \$3.7-billion (over a five-year period) in end user charges to pay for costs they claim to have incurred for this purpose.⁷ While the ultimate competitive benefits of LRN LNP are long-term in nature, one *immediate* benefit would be prompt implementation of number pooling. The Commission should set a specific and aggressive timetable for number pooling, and should expressly link the ILECs' continued ability to impose LNP end user charges upon their compliance with that schedule.

C. The dissension reflected in the initial comments about the vast majority (if not all) of the major specific questions posed by the FCC's NPRM underscores the need for regulatory resolution of the numbering impasse.

Although, in principle, the initial comments reflect unanimous support for efforts to improve utilization, there is substantial divergence among the comments regarding the details of specific measures. The fact that there is so much dissension reflected in the initial comments provides strong evidence as to why leaving decision-making on numbering matters to an "industry consensus" process would leave the public unrepresented at the end of the day. Inaction benefits incumbents, and the opposing positions confirm that, absent affirmative regulatory intervention, inaction will prevail. The interest of consumers differs fundamentally from that of the industry because consumers sustain substantial costs and burdens that carriers do not. Accordingly, as stated in our initial comments, expeditious, unambiguous regulatory leadership is critically needed to progress beyond the current stalemate.

D. Delay in decision-making benefits the incumbent carriers and harms consumers both by exposing them to the costs and burdens of existing area code relief solutions and by delaying the arrival of effective competition by limiting entrants' access to numbers.

Delay in resolving the numbering crisis clearly benefits incumbent carriers because they have access to substantial embedded numbering resources. Thus, the more effectively they can deny consumers and competitors unhampered access to this embedded base, the more effectively they can control an essential component of telecommunications services.

By contrast, delay in regulatory intervention harms consumers twice:

6. Based upon percentage of total US population living in 100 largest MSAs.

7. Comments of Joint Commenters (Joint Commenters), at footnote 71.

Reply Comments of the Texas Office of Public Counsel and NASUCA

- ! Consumers bear the cost of numbering changes necessitated by the postponed implementation of numbering optimization measures.
- ! Competitors= inability to obtain access to numbers prevents CLECs from offering alternatives to customers, thus denying consumers the intended benefits of competition.⁸

8. MediaOne, at 4-5.

Insufficient NXX codes prevents market entry, thus delaying the availability of choices for consumers. In some instances, potential new entrants have in place the infrastructure, marketing, billing, and other systems necessary to offer service, but lack access to numbers.⁹ Competition then depends upon a game of chance: in areas of jeopardy such as New Hampshire and Massachusetts, new entrants are being forced to rely upon a lottery process, which determines whether any particular new entrant can offer service to customers. This element of Arisk[≡] was not likely envisioned by Congress when it passed the Telecommunications Act of 1996, *particularly since incumbent wireline and wireless carriers, for the most part, possess vast inventories of numbers and are thus largely insulated from the "jeopardy" condition.*

E. Others echo the Joint Commenters= recommendation that the FCC pursue several solutions simultaneously.

In our original comments, we urged the FCC to move forward on several fronts simultaneously rather than to limit the measures examined. The Joint Commenters concur with MCI WorldCom=s recommendation that the Commission Anot embrace a single solution, but rather ... lay out a path, beginning with the simplest solutions first, and moving to the more technically difficult solutions as quickly as practicable.¹⁰

9. MediaOne, at 5 (discussing inability to serve the California market).

10. MCI WorldCom, at 10.

II. ADMINISTRATIVE MEASURES

A. The initial comments reflect overwhelming support for the adoption of administrative measures that will provide discipline in the administration and allocation of telephone numbers, and improve efficiency in the use of numbering resources.

The initial comments reflect substantial support for the FCC's recommendations on implementing numerous administrative measures in an effort to improve the efficiency and authority by which numbering resources are administered and allocated. The outpouring of support for these measures is a clear indication that the FCC was correct in its assessment that a greater degree of discipline is required in the administration of numbers. In many cases, the comments are overwhelmingly supportive of many of the particular measures set forth in the NPRM. Among those measures receiving a groundswell of support are the adoption of a uniform set of definitions, the verification of need for initial and growth NXX codes, improved reporting and record-keeping, audit authority, and the requirement for appropriate enforcement of numbering rules and guidelines.

The considerable level and uniformity of support expressed by respondents should prompt the FCC to proceed with implementation of these administrative measures without further delay.

B. The arguments that oppose state involvement and state leadership in resolving the numbering crisis lack any compelling basis for excluding states from the process of developing key administrative measures for numbering issues.

Many parties have sought to remove the states from playing a key role in developing administrative rules and guidelines that drive the consumption of numbering resources. BellSouth, for example, claims that "the Commission should grant state requests for additional delegated authority only when a state commission can demonstrate that it has implemented administrative measures and optimization solutions in accordance with all six NRO criteria as contained in the Notice, at ¶ 6."¹¹ Ameritech asserts that "the only way to gain back any modicum of control in this area is for the Commission to take back responsibility for numbering policy and administration" from the states.¹²

11. Comments of BellSouth (BellSouth), at 7. BellSouth goes on to oppose the states' authority to implement thousands-block pooling until after a national standard has been set and rate center consolidation has been examined, and also opposes the states having the authority to implement UNP.

12. Ameritech, at 12.

What opposing parties fail to recognize is the integral role states play in number resource management. States are on the front lines on all numbering issues within their boundaries, and uniquely understand the situations and needs of their communities. Unlike the Commission or the various industry resource groups that often seek to set policy standards, when it comes to numbering issues, state regulators are better equipped to implement the strategies that best work within a given state's own specific parameters. For example, state regulators have the incentive to limit the financial and societal costs associated with number conservation and to strike a balance between the preferences of the industry and consumers. Several varied parties have correctly recognized that states should be involved in resolving the numbering crisis. MediaOne claims that the states should play a key role in defining any uniform numbering optimization requirements promulgated by the Commission and the states should be heavily involved in establishing the national rules.¹³ Ameritech supports state involvement in implementing national policies and industry guidelines, based upon local circumstances.¹⁴ Joint Commenters therefore generally seek the establishment of Commission rules on administrative measures that provide the states with the authority and flexibility to adjust those rules to accommodate variations that may be particular to a given state.

C. Adoption of a uniform set of definitions will standardize communications among carriers, administrators and regulators.

Support for the Commission's adoption of a uniform set of definitions for categories of usage crossed all ideological boundaries.¹⁵ Joint Commenters support the adoption of industry-wide consensus definitions as a useful manner in which to standardize communications among carriers, administrators, and regulators. In line with the views expressed in the States Outline,¹⁶ these definitions should be codified in the FCC's rules.

13. MediaOne, at 8-9.

14. Ameritech, at 26 [footnote omitted].

15. Comments of the Association for Local Telecommunications Services (ALTS), at 5; Ameritech, at 12; Comments of AT&T Corp. (AT&T), at 11; MCI WorldCom, at 34.; Outline of State Response to Numbering NPRM (States), at 1; Comments of SBC Communications, Inc. (SBC), at 31.

16. States, at 1.

Certain parties have voiced apprehensions regarding the ability to change these definitions once they have been incorporated into the FCC's rules. The parties claim instead that the uniform definitions should simply be incorporated into the Central Office Code Assignment Guidelines and the Thousands-Block Pooling Guidelines (as defined by NANC), as that would more easily and efficiently allow changes to be made to these definitions, should the need arise.¹⁷ The concerns of these parties should be dismissed. Once adopted, Joint Commenters believe that the need to revisit these definitions at the national level in the future is unlikely, and should in no way be encouraged. It is necessary to establish uniform, consensus definitions in order to maintain consistency between all relevant parties, and frequent revisions to these definitions should not be necessary or encouraged. In the event that a material change is necessary to one or more definitions, such changes should be decided upon based upon input from all concerned parties, not just the industry members of NANC.

17. Ameritech, at 12; AT&T, at 11.

D. Carriers should demonstrate a minimum level of need in order to obtain initial NXX codes in a given region, yet more substantial demonstration of need should be required for carriers to obtain growth NXX codes.

As discussed in our initial comments, Joint Commenters agree with the Commission's proposal to require a demonstration of need for assignment of NXX codes, regardless of whether they be Ainitial or Agrowth codes. Generally, commenting parties agree that some demonstration of need is required prior to the assignment of initial codes.¹⁸ Those parties contributing to the States Outline recommend a three-pronged showing of need in order for a carrier to obtain an initial code. A carrier would be required to (1) show that it has a valid interconnection agreement, or will obtain one within six months; (2) show proof of certification; and (3) demonstrate that it will have facilities in the rate center within six months.¹⁹ MCI Worldcom and the ALTS, however, claim that any demonstration of need beyond proof of certification to provide service in the region served by a particular NXX code would be simply a *forecast* of need that no carrier can truly verify.²⁰ ALTS goes so far as to state that it is unlikely that requiring verification of need would measurably affect the number of initial codes assigned.²¹

18. Ameritech, at 15; AT&T, at 14; MCI WorldCom, at 25.

19. States, at 3. SBC recommends a similar plan for verifying need for initial codes. SBC, at 42-43.

20. MCI WorldCom, at 25-26; ALTS, at 7.

21. ALTS, at 7-8.

Parties also claim that treatment of service providers with regard to assignment of codes must be nondiscriminatory. Accordingly, ALTS argues that the provision of information beyond what is required in the CO Code Assignment Guidelines is unnecessary.²² Ameritech apparently concurs with this idea, as it approves of measures that provide for the same level of discipline for all types of carriers.²³ Ameritech goes on to say that abuse in obtaining initial NXX codes could be mitigated by allowing the NANPA to require proof of certification to provide service in the state and area code where the initial code is requested.²⁴ Of course, it is not surprising that incumbents seek to set limits on entrants' ability to obtain initial codes, since (by definition) incumbents do not themselves confront this issue.

While it may be true that, as suggested by ALTS, a demonstration of need for initial codes may not have a significant impact *on its own* as a numbering conservation measure, Joint Commenters believe that it is important *as an administrative measure* to protect against unnecessary number allocations wherever possible, particularly where numbers are distributed in blocks of 10,000 (i.e., assignment of whole NXX codes to individual carriers). Examples of patently excessive code requests have arisen. Level 3 Communications had asked for and had been granted 209 NXX codes in the Eastern Massachusetts LATA (the 617, 781, 508 and 978 NPAs), only to subsequently return 164 to the Code Administrator earlier this year.²⁵ Such requests work to accelerate the onset of NPA jeopardy conditions and reduce the availability of NXX codes to meet the *legitimate* needs of other carriers. Joint Commenters agree that treatment of service providers should be nondiscriminatory in nature where possible, yet also agree with ALTS' assessment that the assignment of initial codes will be limited primarily to non-incumbent carriers.²⁶ However, as pointed out by MCI Worldcom, there is nothing a carrier can provide aside from *forecasts of need* when requesting initial NXX codes.²⁷ Accordingly, Joint Commenters concur that some minimal level of need should be required of carriers seeking assignment of an initial NXX code, which would most likely consist of proof of certification when a carrier is establishing its initial presence in a region.

In addition, Joint Commenters, along with several other parties, firmly support number reclamation from carriers that fail to utilize initial codes within a specified period of time.²⁸ Under

22. *Id.*

23. Ameritech, at 15.

24. *Id.*

25. Comments of Level 3 Communications, Inc., *In Re Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes*, NSD File No. L-99-19, (April 5, 1999).

26. ALTS, at 7-8.

27. MCI WorldCom, at 25-26.

28. MediaOne, at 12; Bell Atlantic, at 14; SBC, at 63.

the plan proposed by MediaOne, code holders would have six months in which to initiate service through those numbers, and would retain a one-time three-month extension for each code, the use of which must be justified by said carrier (excepting any technical and/or operational difficulties or delay that is not the fault of carrier). Joint Commenters believe that unused codes that are simply being hoarded by various service providers is a large enough problem to warrant adoption of a strong reclamation plan such as that proposed by MediaOne, as the voluntary return of assigned codes may not prompt enough response from code holders to make a difference.

With respect to growth codes, the majority of the respondents believe that a demonstration of need for growth codes is also an important administrative measure that must be addressed.²⁹ As to a specific mechanism used to demonstrate such need, most telecommunications service providers support the continued use of the AMonths-to-Exhaust worksheet,³⁰ while other parties advocate the establishment of a utilization thresholds³¹ and/or the submission of other data (such as line growth data) that would more objectively demonstrate a need for additional numbers.³²

Joint Commenters maintain that the current practices for assigning codes appears to rely entirely too much upon unsupported projections by carriers, such as those submitted in the AMonths-to-Exhaust worksheet, rather than upon demonstrated need. Rather than continue with the unsubstantiated forecasts contained in the status quo worksheet, Joint Commenters urge the Commission to instead adopt the use of utilization thresholds as the best method for verifying a carrier's need for growth codes. Joint Commenters disagree with the recommendation set forth by some parties that reject the use of separate utilization rates for different industry segments.³³ Joint Commenters are sympathetic to new entrants' opposition to the use of utilization levels because they generally discriminate against new entrants.³⁴ In order to prevent such actions, a reasonable range of utilization levels could be adopted by the Commission, and specific threshold levels could be set by the individual states in order to meet that state's specific needs, or the needs of a particular subset of service providers.³⁵ Another possible solution would be for the Commission to consider MediaOne's proposed sliding utilization rate scale, which attempts to

29. States, at 4; SBC, at 44; MCI WorldCom, at 25.

30. Ameritech, at 16; AT&T, at 14; MediaOne, at 13.

31. States, at 4.

32. States, at 4; SBC, at 45.

33. States, at 5-6; SBC, at 27, 47; Cellular Telecommunications Industry Association Comments (CTIA), at 11.

34. ALTS, at 12; MediaOne, at 14.

35. As stated in our initial comments, unfair burdens should not be placed on new entrants, who could be disproportionately affected by the establishment of fill rates because they may not have had the opportunity to assign numbers and/or barriers to entry may have prevented them from assigning numbers. Joint Commenters, at 24.

reflect the fact that Aincumbents and new entrants are dissimilarly situated.³⁶ As suggested by other parties, utilization rates should be set at the rate center level,³⁷ as opposed to the NPA or statewide level, in order to provide the necessary amount of specific information required to evaluate the growth code request.

36. MediaOne, at 14.

37. States, at 5; CTIA, at 9.

In the event that the Commission chooses not to adopt utilization thresholds, Joint Commenters recommend the adoption of some form of validation that the information submitted with a request for growth codes is indeed accurate and that the need is *bona fide*, as suggested in the States Outline.³⁸

Joint Commenters again agree with MediaOne's proposal to reduce from eighteen months to six months the amount of time carriers have to initiate service with assigned codes, and to reduce the time period for possible extension to three months.³⁹ Failure to initiate service with new codes should result in reclamation.

E. The FCC and states should develop a policy on reserved numbers that balances legitimate consumer interest in having access to telephone numbers with the compelling need to prevent telephone number hoarding.

The FCC, in requesting comment on the appropriate definition of "reserved number" and the NANC's working set of characteristics on reserved numbers,⁴⁰ has seemingly targeted reserved numbers as a substantial contributing factor to the pending exhaust of the North American Numbering Plan, yet the actual impact of numbers reserved by a carrier at the request of specific customers has not been quantified by any commenter addressing this issue. It is entirely possible that in aggregate such reserved numbers represent little more than noise when compared with the extreme underutilization of 10,000-number NXX codes by many service providers. As a threshold matter, the Commission should gather specific quantitative data on the extent to which numbers reserved at the request of customers are contributing to exhaust, and on that basis should afford appropriate weight to measures directing at restricting legitimate reservation requests.

If, based upon further analysis, the Commission determines that the lack of such requirements has led to inconsistent assignment and inefficient utilization of numbering resources throughout the North American Numbering Plan, it should consider limiting customer reservations in some manner that appropriately balances customer need with number conservation goals. On the other hand if, as the Joint Commenters suspect, reservations of numbers to meet the legitimate needs of specific customers is not a major contributor to number exhaust, the Commission should not make such customers scapegoats for the carriers' inability to effectively manage this important and scarce national resource. That having been said, the Joint Commenters would support the

38. States, at 4.

39. MediaOne, at 15.

40. Notice, at && 46-49.

adoption of *reasonable* requirements that appropriately and efficiently conserve numbering resources while permitting local service providers and end users to accomplish their telecommunications objectives and meet their legitimate business needs.

As set forth in the NPRM, the Numbering Resource Optimization Working Group (NROWG) has made substantial progress in developing a draft set of uniform characteristics that would apply to a Areserved number,≡ and a number of parties have recommended adoption of this current draft proposal.⁴¹ Joint Commenters agree with those characteristics, all of which must be satisfied:

- (1) A reserved number is a non-working number;
- (2) A reserved number has been set aside by a service provider at the request of a specific end user customer for that customer=s future use;
- (3) The reserved status of a telephone number is reflected in the telephone number administration system of the Service Provider in whose inventory the numbers are being reserved;
- (4) The name of the party requesting the reservation is in the service provider=s administration system;
- (5) The end user is aware that the number is reserved;
- (6) A reserved number has some restrictions such as duration and quantity; and
- (7) A reserved number is portable where portability is applicable and the reserved number is associated with working numbers.⁴²

Additionally, certain guidelines have also been established by the NROWG relative to reserved numbers. Thus far, the NROWG has come up with the following:

- (1) Service providers must ensure that number reservations are not used for the purpose of hoarding;
- (2) Reserved number guidelines must apply equitably to all classes of customers yet distinguish between residential and business customers;
- (3) Reserved number guidelines must apply equally to all service providers making telephone number reservations on behalf of their end-user customers;
- (4) Reserved number guidelines must apply equally to service providers making use of telephone numbers from another service provider=s inventory (e.g., resellers, Type 1 CMRS carriers);
- (5) Reserved number intervals begin for all customers regardless of any previous reservations, on the effective date of this process; and

41. ALTS, at 6; Ameritech, at 14; Bell Atlantic, at 5; MCI WorldCom, at 36; States, at 2.

42. Notice, at & 46, citing NRO Report to the NANC, April 21, 1999.

- (6) The original interval limitation established for given customers shall continue uninterrupted if or when the customer changes service providers⁴³

In addition to the recommendations set forth by the NROWG, Joint Commenters propose the following additional guidelines on telephone number reservation that will apply uniformly to all carriers:

- (1) A telephone number may be reserved for legitimate cause, including: the establishment of new service; relocation to a different wire center; the addition of lines to existing service; and a projection of future use based on an established business plan.
- (2) Telephone numbers may normally be reserved for up to 12 months⁴⁴ and can then be extended for a period of 90 days. After the extension period has expired, the customer may apply to the carrier for further 90-day extensions upon a showing of legitimate need or basis for the extension, such as a delay in the occupancy date for a building or building complex or a construction schedule that cannot be completed within the normal reservation period limit. Upon expiration of the reservation period and any extensions thereto, the reserved telephone numbers are returned to the pool.
- (3) Customers whose requests for reserved numbers are denied or not extended may appeal to the state commission for relief.
- (4) After the extension period has expired, that customer can attempt to reserve another telephone number upon meeting the other requirements identified above.⁴⁵
- (5) The maximum quantity of numbers that may be reserved by a customer shall be determined on the basis of demonstrated need.
- (6) Individual customers shall have the right to request up to two reserved telephone numbers without having to provide any demonstration of specific need.
- (7) The application of the number reservation guidelines to a local exchange carrier and/or to an end user conveys no title or property right to that customer or service provider.
- (8) Special requests for number reservation will be honored on a >first come, first serve= basis.

43. *Id.*, at & 47.

44. MCI WorldCom believes that setting the reserved time at 12 months or longer serves the business needs of the public. MCI WorldCom, at 37.

45. MCI WorldCom propose that any carriers holding reserved numbers for a period longer than 12 months be subject to a fee. *Id.*, at 37-38.

- (9) The local exchange carrier, and upon appeal, the appropriate regulatory agency(ies) to whom numbers are assigned will be the final arbiters of any number assignment dispute.
- (10) All reservation intervals are considered to be >not to exceed= intervals. Reservation time periods may be shorter if the end user agrees.

Several other parties have weighed in with their own additional recommendations on how reserved numbers should be treated. MCI Worldcom recommends that reserved status for numbers be dependent upon a Alegally enforceable written agreement.⁴⁶ MCI also recommends the imposition of fees on carriers who hold numbers in reserved status beyond the agreed-upon [reserve] period.⁴⁷ States Outline recommends a reserve period of just 45 days, with extensions available only where extenuating circumstances prevented the assignment of numbers. Numbers not assigned in 45 days would be reclaimed.⁴⁸

Joint Commenters agree with Bell Atlantic that MCI Worldcom=s recommendation of relying upon a Alegally enforceable written agreement≡ is unduly burdensome and would only serve to Amake the process more complex and burdensome,≡⁴⁹ and would require auditors to make a legal assessment on each and every number held in reserve status.⁵⁰ However, as stated above, the

46. Notice, at & 48, citing MCI WorldCom Comments at 25-26.

47. The Agrace period≡ captured in MCI WorldCom=s recommendation is 12 months. MCI WorldCom, at 38.

48. States, at 2-3.

49. Bell Atlantic, at 6.

50. *Id.*, 6.

reservation period should be longer than the 45 days proffered by the Commission⁵¹ and supported by the States Outline. A 45-day reserve period applies to toll-free numbers, and this appears to have been the sole basis for the Commission's inquiry on the use of this time period as an appropriate standard.⁵² Joint Commenters support the arguments of Bell Atlantic and MCI WorldCom that there is a distinct difference between reserving numbers for outward calling services and reserving toll-free numbers,⁵³ such that simply comporting the reserved toll-free standards to other reserved numbers is unwarranted. And unless there is affirmative, quantitative data to support the hypothesis that reserved numbers are actually a major contributor to number exhaust, Joint Commenters would oppose the California PUC in its recommendation that a narrow definition of Areserved≡ numbers should be established at the national level, but that the states should have the authority to further narrow that definition and Aimpose tighter restrictions on the use of reserved numbers to meet local needs and to support conservation efforts.≡⁵⁴

Joint Commenters note and underscore the point that a clear distinction should be made as between number reservations that are expressly requested by specific customers for their own legitimate purposes and numbers that are set aside by *carriers* in order to gain some market advantage. This might include, for example, holdouts of "vanity" numbers (e.g., those ending in '00' or involving sequences of the same number (e.g., '3333' or '2244') or perhaps those that spell out certain words that a carrier might believe would afford it a marketing advantage in offering service to certain types of customers. Wireless carriers who pre-program numbers into inventoried handsets may also be contributing to number exhaust. The NROWG guidelines would not consider either of these cases to qualify as "reserved numbers" because they are not "set aside by a service provider *at the request of a specific end user customer* for that customer's future use." It is, however, entirely possible that the aggregate quantity of numbers being set aside by carriers for purposes *other than* "at the request of a specific end user customer for that customer's future use" may well exceed those meeting the "reserved number" definition.

51. Notice, at & 49.

52. *Id.*

53. Bell Atlantic, at 6. MCI WorldCom argues that Areserved≡ telephone numbers are more comparable to Aassigned≡ toll free numbers than Areserved≡ toll free numbers. MCI WorldCom, at 36. The lag time for Aassigned≡ toll free numbers is 6 months - the lag time of 45 days that applies to Areserved≡ toll free numbers applies to the time period during which the customer chooses a service provider. *Id.*, at 36-37.

54. Comments of California Public Utility Commission (California PUC), at 12.

While the Joint Commenters urge the Commission to take the necessary steps to institute controls on the process by which telephone numbers can be reserved, we caution that placing undue restrictions on meeting legitimate customer needs may unduly penalize consumers for number resource issues that are not of their making.

F. The efficient allocation of numbering resources depends critically upon the quality of the data that the industry submits.

There is little question but that the currently-employed Central Office Code Utilization Survey (ACOCUS⁵⁵) model should be replaced. As MediaOne observes, the efficient allocation of numbering resources is dependent on the quality of the data received by NANPA.⁵⁶ A more detailed and efficient model for reporting numbering utilization data is recommended, as is evident by the overwhelming support for the Commission's assessment⁵⁷ as expressed by parties in the initial round of comments. The precise model to be used, however, has not yet been selected. Three alternate models that are under consideration are the Line Number Utilization Survey (ALINUS⁵⁸), the AT&T model, and the AHybrid⁵⁹ model. As presented in the June 30, 1999 COCUS Report, the NANC has accepted the use of the Ahybrid⁵⁹ model as a replacement to the COCUS model,⁵⁸ and many commenting parties have concurred.⁵⁹ Many telecommunications service providers recommend the submission of data on a semi-annual basis, as opposed to quarterly, even in the nation's largest MSAs, as not enough change is likely to occur on a quarterly basis as to justify the additional cost and inconvenience to carriers that would be generated by such frequent collection of data.⁶⁰

Joint Commenters agree that a successor to the COCUS should be adopted and implemented as quickly as possible.⁶¹ The timely and efficient collection of number exhaust data is of extreme importance in identifying NPAs that are most susceptible to exhaust; identification of these areas will allow subsequent number conservation and optimization methods to be implemented quickly and will provide the greatest opportunity to avoid the introduction of new area codes. Joint Commenters support relying upon NANC's ability to select and implement the fairest and most

55. *Id.*, at 15.

56. MediaOne, at 17.

57. Notice, at & 72.

58. AT&T, at 18-19.

59. ALTS, at 12; Ameritech, at 22; AT&T, at 18-19; BellSouth, at 14; MCI WorldCom, at 39; SBC, at 49-50.

60. ALTS, at 14; Ameritech, at 20; AT&T, at 21; MCI WorldCom, at 40; SBC, at 52.

61. MCI WorldCom believes that a replacement for COCUS can be developed within half of the estimated three-year time period. MCI WorldCom, at 41.

efficient model available for the accomplishment of this task, with a mechanism to assure full consumer and state PUC input. However, Joint Commenters fail to be convinced that the submission of data on a quarterly basis for NPAs in the top 100 MSAs is unnecessary. It is in precisely these high density areas that the majority of area code splits and overlays are implemented, and it is well established that competing carriers are more likely to enter higher density markets over low density markets, thereby driving up the demand for numbers. Joint Commenters believe that quarterly reporting of data in these high-density areas is feasible and should be adopted; should the service providers' predictions prove true and quarter-to-quarter data is *not* significantly different or specifically useful in identifying NPA exhaust at an early stage, then the Commission could revisit this issue and revise the reporting requirement to become a semi-annual event.

G. Contrary to the assertions of some, detailed data should be provided to states, and the FCC should authorize states to link the assignment of NXX codes and thousands-blocks to carriers' compliance with reporting and record-keeping requirements.

State commissions should have the authority to require that *all codeholders*, whether or not subject to state regulation for certification, ratemaking or other purposes, provide detailed number utilization data for use by the commission in formulating numbering policy and in supporting the administration of number resources within that jurisdiction. State commissions routinely deal with and have the capability to fully and adequately protect the confidentiality of such data, to the extent that codeholders have a legitimate basis for seeking such treatment. In whatever capacity the states are ultimately afforded authority to address numbering issues, they cannot be expected to do so without full and accurate data to inform and support their decisions.

Accordingly, the Commission should clarify the obligation of all codeholders to provide such data notwithstanding the limits of the state commission's regulatory authority in other respects. State commissions should also be given the authority to withhold the assignment of additional numbers and number blocks, or consider and apply other penalties, to any service provider that fails to comply with the record-keeping and data reporting requirements that the state commission may adopt.

H. Consistent with the recommendations of many commenters, the FCC should establish (and should immediately authorize states to establish) all three forms of audits that the NPRM describes.

Audits (or the threat thereof) serve an important purpose in the administration of numbers, as there is significant incentive for carriers to abuse the rules and guidelines associated with requesting and receiving numbers. The Commission is correct in its assessment that audits are a valuable tool⁶² in keeping carriers honest.⁶³

62. Notice, at ¶ 83.

Many commenting parties support the adoption of Afor cause≡ audits as a necessary means to police the industry in its use of numbering resources.⁶⁴ AT&T and ALTS question the need for Ascheduled≡ audits, or the necessity of having both Ascheduled≡ and Arandom≡ audits, as the former would preclude the need for the latter.⁶⁵

The Commission should unambiguously support all three forms of audits as outlined in the Notice, and should furthermore authorize state regulators and consumer advocate groups to participate in the auditing process.

63. The Notice identifies three specific types of audits: Afor cause≡, Ascheduled≡, and Arandom≡. *Id.*, at && 84-87.

64. ALTS, at 15; AT&T, at 22; SBC, at 56.

65. AT&T, at 15; ALTS, at 22-23.

III. RATE CENTER CONSOLIDATION

A. There is general support for the Joint Commenters' assertion that states should have final authority for Rate Center Consolidation.

The Commission itself acknowledges that rate center consolidation brings varying levels of conservation benefits and disruptive impact, depending on the effect on calling scopes and the complexity of the rate center geography,⁶⁶ and that rate centers are inextricably linked with local call rating and routing issues, which fall within the traditional jurisdiction of state public utility commissions.⁶⁷

The RBOCs tend to agree that the issue has to be dealt with on the state level.⁶⁸ SBC correctly notes that "[b]ecause RCC involves detailed examination of local calling scopes, rate center structures, and 911 systems, state commissions likely are best able to determine whether RCC would be justified in any particular local area."⁶⁹ The USTA, on behalf of its ILEC members, also agrees that the FCC need not do anything with regard to rate center consolidation, adding that the FCC need only remind states that their efforts will have an impact upon future NANP exhaust.⁷⁰ AT&T believes states should have full authority over RCC.⁷¹

66. Notice, at ¶ 115.

67. *Id.*, at ¶ 117.

68. Bell Atlantic, at 16; SBC, at 105; Ameritech, at 31.

69. SBC, at 105.

70. Comments of United States Telephone Association (USTA), at 6.

71. AT&T, at 33.

The Joint Commenters support the Commission in its effort to clarify that states do have full authority over rate center consolidation measures.⁷² However, while it is important that states have such authority, they need additional authority to adopt measures that will enhance the effectiveness of rate center consolidation and the overall conservation effort.

- B. Most commenters concur with the Joint Commenters that the FCC should not limit states' access to numbering optimization measures, nor should the FCC link authority for one measure to the implementation of a different measure.**

72. Notice, at & 117.

The Joint Commenters have found that, almost without exception, the industry, state, and consumer representatives support the Joint Commenters' position that the FCC should not seek to link implementation measures (e.g., grant authority to states to reclaim numbers only if they implement rate center consolidation).⁷³ Supporters of our position range from CLECs to ILECs to state commissions. BellSouth and Ameritech are the exceptions, making them two of the few ILECs that support the Commission's proposal.⁷⁴ BellSouth asserts that the industry and the Commission should exhaust all other efforts, including rate center consolidation, before thousands-block pooling is implemented.⁷⁵ As the Joint Commenters have noted, the adoption of number pooling, number reclamation and other measures *enhances the effectiveness of rate center consolidation*, and rate center consolidation enhances the effectiveness of these other measures. Requiring rate center consolidation as a threshold condition for implementation of other measures ignores these synergies entirely.

73. Supporters of the Joint Commenters' position include, but are not limited to, the following: MediaOne, at 27; USTA, at ii; AT&T, at 35; ALTS, at 22; States, at 11; Bell Atlantic believes rate center consolidation is fundamentally a state issue, 15.

74. Ameritech asserts that rate center consolidation and thousands-block pooling are competing measures, and as such, pooling is not a good conservation measure at all. Ameritech, at 41; Bell South, at 23. As the Joint Commenters have shown, this notion is demonstrably off-base. Some ILECs have claimed that they cannot assign the same NXX code to different switching entities in the same rate center, thereby diminishing the potential gain from rate center consolidation. A case in point is the 602 NPA serving the Phoenix metropolitan area where, despite NPA-wide rate center consolidation, the single NPA is currently being split into three; on the other hand, the '212' NPA serving Manhattan in New York City, and the '202' NPA serving the District of Columbia, both of which are single-rate center NPAs in among the most telecommunications-intensive markets in the world, have survived without relief for far longer than many other area codes in which large numbers of rate centers continue to exist. Despite assertions to the contrary, pooling overcomes this single-switch NXX-code limitation, both by permitting the same NXX code to be used across several ILEC switches as well as by CLECs serving the same expanded rate center, thereby avoiding the need for the CLEC to be assigned an NXX code of its own. Thus, rather than being *competing* measures, rate center consolidation and pooling are in fact *complementary* approaches to number resource optimization.

75. BellSouth, at 23.

Most commenters are opposed to the establishment of any linkage between rate center consolidation and thousands-block pooling because of the delay in pooling implementation that will occur as a direct result. The Massachusetts DTE presents a persuasive example as to why thousands-block pooling cannot await rate center consolidation. The Massachusetts DTE has started a proceeding on rate center consolidation but anticipates that an order will not be issued until January 2000, at the earliest, and indicates that even that date is predicated upon the fact that no questions arise about the [feasibility] study that Bell Atlantic is currently conducting. A thousand block number pooling has the potential of preventing area code exhaust in Massachusetts only if timely implemented. The Department's experience with rate center consolidation demonstrates the impracticality of requiring consolidation prior to ordering mandatory pooling.⁷⁶

The Joint Commenters do not oppose, *per se*, the development of national guidelines on certain number optimization measures, and reiterate that states will not seek to capriciously diverge from such guidelines. However, given the current crisis situation, the FCC should not keep states "on hold" any longer, and even if states develop guidelines before the FCC completes its process, the burden associated with any potential inconsistency pales in significance with the cost of further delay.

C. SS7-based rating is not a viable alternative to NANP-based call rating.

76. Comments of Massachusetts Department of Telecommunications and Energy (Massachusetts DTE), at 7.

MCI WorldCom supports removing rating intelligence from the telephone number address, apparently favoring some form of "real time" price determination at the time that a given call is dialed.⁷⁷ The Joint Commenters strongly disagree with this position, and endorse the comments of the Ad Hoc Telecommunications Users Committee in this regard.⁷⁸ The tradition of using numbering to convey rating information to consumers is longstanding and cannot be replaced until an alternative means of informing users *in advance of their "purchase decision"* (i.e., in advance of placing a given call) as to the rate treatment of that call can be found. Even if service provider switches and signalling systems have the technical capability to transmit this information to the originating central office for call rating purposes, there is no present mechanism for passing the rating information back to the individual who will be responsible for paying for the call. As the Ad Hoc Telecommunications Users Committee has noted, PBX systems used by business, institutional and government organizations do not possess the technical capability to receive and to process call rating information, and rely entirely upon the dialed number for that purpose.⁷⁹ Individual consumers certainly do not possess this capability, and would at the very least be required to purchase specialized customer premises equipment to receive and report the rating information, but even then such detail would only be provided to the consumer *after* the called number has been dialed.⁸⁰ AT&T argues that the SS7 network would require carriers to complete a query for every call. This proposal amounts to portability outside the rate center, or geographic portability.⁸¹ AT&T also agrees with the Joint Commenters that this system would create a real problem for consumers who may incur unanticipated toll charges when dialing numbers formerly billed as local calls.⁸²

Carrier support for the elimination of the call rating function from the NANP is yet another example of the fundamental indifference displayed by the industry to consumer issues and interests with respect to numbering. Here, as in the various other incarnations of this "consumer be damned" attitude, the Commission should dismiss and disregard such self-serving "solutions" that ignore the legitimate needs and concerns of consumers.

77. MCI WorldCom, at 23-24.

78. Ad Hoc, at 18-19.

79. *Id.*, at 18.

80. Such a device might be similar to a "Caller ID box" that would display the price of the call to the calling party immediately following the completion of dialing and before ringing begins. To serve any reasonable consumer protection role, some delay would then need to be introduced into the call completion process to afford the calling party an opportunity to decide whether to proceed with the call; moreover, to be effective, the consumer would also need to equip each extension phone in his/her home with a "box" to assure that call rating information was always available. Alternatively, the central office could generate a audio message conveying the pricing information, but that would extend the post-dial delay even further.

81. AT&T, at 34.

82. *Id.*, at 35.

D. While rate center consolidation can extend the life of a relatively new NPA, it cannot act as a substitute for other conservation measures.

Many commenters agree with the Joint Commenters that while rate center consolidation may be useful in extending the life of an NPA, it should not preclude the use of other conservation measures. The Joint Commenters concur with the Ad Hoc Telecommunications Users Committee, which notes that rate center consolidation is most useful in concert with other conservation measures and that the Commission should ensure that rate center consolidation is not given higher priority than number pooling and other more effective measures.⁸³ Joint Commenters believe that the potential benefits of rate center consolidation will be severely limited unless it is also combined with other measures, particularly number pooling, except under certain specific circumstances. AT&T also believes that rate center consolidation is a good conservation measure when acting as a complement to number pooling, since it expands the geographic area over which customers can port their numbers.⁸⁴

83. Ad Hoc, at 17.

84. AT&T, at 33.

IV. MANDATORY TEN-DIGIT DIALING

A. The FCC should eliminate mandatory ten-digit dialing from the list of numbering optimization measures and should no longer require it where overlays are implemented.

As the Joint Commenters' initial comments demonstrate,⁸⁵ mandatory ten-digit dialing is adverse to the public interest and offers negligible relief. MediaOne agrees with our position, noting that mandatory ten-digit dialing "will cause significant confusion and hardship for residents and businesses⁸⁶ and that there is a Anear-universal contempt that customers have toward such measures.⁸⁶

The NROWG considered this option in its effort not to limit consideration of potentially feasible numbering optimization measures. In the year since it was proposed by certain NRO members as worthy of examination, proponents have not been successful in demonstrating why ten-digit dialing is required.⁸⁷ However, there are significant differences of opinion among the various proponents, and some have begun to reformulate their original positions. US West admits that ten-digit dialing "will not itself extend a potential NPA exhaust date."⁸⁸ One ILEC has even acknowledged that the costs associated with ten-digit dialing are enormous and that technologies have emerged (i.e. the advent of widespread LNP-capability) that may make ten-digit dialing a non-issue.⁸⁹ SBC asserts that the long term benefits of ten-digit dialing "pale in comparison to the immediate need to significantly reduce costs and inconvenience to customers and society."⁹⁰

85. Joint Commenters, at 34.

86. MediaOne, at 28.

87. USTA asserts that mandatory ten-digit dialing should be implemented "under a national uniform dialing plan," and advocates implementation in "no more than three years." USTA, at 7.

88. Comments of US West (US West), at 13.

89. SBC, at 98.

Local number portability, SBC argues (and the Joint Commenters concur), has "eliminated the need for the ten-digit dialing requirement. SBC respectfully suggests that the time has come to eliminate the requirement altogether."⁹¹

90. *Id.*

91. SBC, at 100.

The CLECs, through ALTS, argue that ten-digit dialing is necessary to ensure that new entrants in overlay area codes are not disadvantaged.⁹² This argument does not hold up well in the face of current LNP-capability where those consumers who switch to CLEC carriers can retain their old numbers. SBC argues that it is only an issue for entirely new (most likely second) lines.⁹³ Furthermore, this would also be a non-issue if pooling measures X and in particular UNP X were implemented so as to forgo the need for future area code overlays.

Ten-digit dialing is not a numbering solution. As MCI Worldcom observes, the Commission should not confuse national ten-digit dialing with certain number optimization measures.⁹⁴ MCI WorldCom does not oppose requiring national ten-digit dialing, but considers its implementation as a first step in expanding the NANP by acclimating the public to dialing more digits rather than as a number optimization measure. Because the Joint Commenters consider NANP exhaust to be unthinkable due to its extreme cost and near-impossibility of timely expansion,⁹⁵ the notion that the Commission should consider ten-digit dialing as a first step in expanding the NANP must be rejected because expanding the NANP must be rejected.

Furthermore, consumers have been paying for LNP through end-user charges and should be able to fully benefit from its capabilities. Therefore, conservation measures should focus on tools that build on LNP-capability. The Joint Commenters are in agreement with the Ad Hoc Telecommunications Users Committee, which argues that "the Commission could achieve far more benefit with far less disruption using number pooling and other LNP-based measures (particularly INP and UNP)."⁹⁶

92. ALTS, at 30.

93. SBC, at 99.

94. MCI WorldCom, at 28.

95. Joint Commenters, at 17-18.

96. Ad Hoc, at 24.

There is also general agreement that D-digit dialing is not a viable option at this time.⁹⁷ MCI opposes D-digit expansion because of the costs imposed to network carriers, PBX owners, and owners of other types of specialized equipment. MCI also recommends that the industry continue to reserve the D-digit as a possible indicator should we have a transition to a new NANP to indicate whether the old or new NANP address has been dialed.⁹⁸ The USTA also opposes immediate D digit expansion and instead supports further study of the implementation issues involved.⁹⁹ The use of this measure is not warranted given the potential network disruptions and the fact that other measures may be far more effective.

Ten-digit dialing and D-digit expansion have been given ample consideration. In this proceeding, the FCC should conserve regulatory resources by unambiguously eliminating this "solution" from the universe of options. The Commission should instead pursue, with the states, the implementation of LNP-based solutions.

97. Opponents of D-digit implementation at this time include, but are not limited to: States, at 11; USTA, at 7-8; MCI WorldCom, at 30; and Ad Hoc, at 24.

98. MCI WorldCom, at 30.

99. USTA, at 7-8.

V. POOLING

A. **Sequential number assignment is essential in order to preserve uncontaminated blocks in anticipation of thousands-block pooling.**

Some carriers oppose sequential number assignment because they contend the costs of this measure would outweigh the benefits,¹⁰⁰ while other commenters support requirements for sequential number assignment as a useful tool.¹⁰¹ In these Reply Comments, Joint Commenters clarify the recommendation we made in our Initial Comments: We do not propose that numbers be required to be assigned sequentially *within* a block, but rather that carriers be required to substantially fill one block before going on to assigning numbers from another block of one thousand numbers. Moreover, the Joint Commenters do not believe that carriers who currently possess full 10,000-number NXX blocks should be required to use 1,000-number blocks in any particular sequence, only that one block be filled before a new one is opened up. In its Order adopting number pooling for the 847 NPA, the Illinois Commerce Commission established such a requirement;¹⁰² in an "industry consensus" adopted by Massachusetts service providers, a similar requirement (referred to as "virtual pooling") has been agreed to.¹⁰³ The Joint Commenters reiterate their recommendation that the FCC authorize states to adopt this measure immediately so that states can preserve uncontaminated blocks in anticipation of thousands-block pooling which will necessarily occur on a slightly slower time table. Absent such a requirement, carriers confront an incentive to contaminate their blocks in anticipation of thousand-block pooling. Because the interests of individual carriers diverge substantially from the interests of the public, regulatory intervention is necessary and appropriate.

100. Ameritech claims that sequential numbering serves no valid purpose.≡ Ameritech, at 46. NEXTLINK claims that it would end up creating more costs than benefits.≡ Comments of NEXTLINK Communications, Inc. (NEXTLINK), at 25. *See also* Bell South, at 24.

101. AT&T also asserts that sequential numbering is an important tool if it is limited to the sequential use of blocks. AT&T, at 52.

102. Petition to Implement a Form of Telephone Number Conservations Known as Number Pooling within the 312, 773, 847, 630, and 708 Area Codes, *Order*, Docket No. 97-0192, Illinois Commerce Commission, May 6, 1998.

103. Pursuant to DTE 98-38, on July 14, 1998, all code holders in Massachusetts agreed to reserve vacant thousand blocks of assigned NXXs.

B. The FCC should delegate authority to state PUCs to establish contamination levels for thousands-block pooling based upon states' assessment of the costs, benefits, and competitive impacts of the contamination threshold.

Initial comments on the contamination level for thousands-block pooling are diverse. No one seems to dispute the frequently observed statement that ILECs' blocks are relatively more contaminated than new entrants' blocks. Because of this difference, CLECs are understandably concerned that they will be contributing disproportionately to the common pool. Although Joint Commenters are sympathetic to the potential for disparity in relative burdens on differing industry segments, Joint Commenters also seek flexibility for states to improve the utilization of numbering resources.

The CLECs offer various recommendations to address the potential disparity. MediaOne supports a ten percent threshold for CLECs and a 25% threshold for ILECs to ensure that ILECs and CLECs contribute equitably to the industry pool.¹⁰⁴ At least one new entrant's way of addressing the competitive disparity is to set the contamination level at zero (that is, at the outset, to only use uncontaminated blocks for pooling) and to implement unassigned number porting immediately. MCI WorldCom further opposes the 10% level as arbitrary and raises the concern that with widespread contamination of blocks, some customer numbers will fall through the crack.¹⁰⁵ MCI Worldcom recommends that, instead, carriers only return entirely uncontaminated blocks to the pool, and that carriers rely upon unassigned number porting to provide access to stranded blocks of numbers.¹⁰⁶ Only after the Commission completes a study of the numbers that are stranded after pooling of non-contaminated blocks is implemented, and after the Commission's improved requirements for data reporting become effective, does MCI Worldcom support further consideration of whether it makes sense to reclaim contaminated blocks. MCI WorldCom also asserts that the use of contaminated blocks will increase costs for carriers (by, for example, requiring carriers to undertake intra-service provider porting whereby each carrier will have to manually port back from the NPAC to itself that customer-assigned or contaminated number), yet will not aid much to delay area code exhaustion.¹⁰⁶

104. MediaOne, at 23-24.

105. MCI WorldCom, at 15.

106. *Id.*, at 58-59.

ILECs apparently support low contamination levels (and in some cases only the donation of uncontaminated blocks) because minimizing the contamination of pooled blocks minimizes the amount of porting of telephone numbers, and because they handle large volumes of calls that are presently intraswitch calls.¹⁰⁷ If, however, one assumes that one day there may indeed be intense competitive activity, porting will be the norm rather than the exception and thus systems that are established today should be designed to accommodate the expectation of future competition.

The Joint Commenters urge the FCC to delegate authority to state commissions to assess the relative costs, benefits, and competitive implications of varying contamination levels for thousands-block pooling, particularly when combined with the timely implementation of UNP. Based on the particular circumstances of the state, and whether states have required UNP (which provides access to embedded numbering resources), states can establish the appropriate contamination level for thousands-block pooling.

C. The Joint Commenters continue to oppose cost recovery for thousands-block pooling because these costs are a normal cost of doing business.

107. An assigned number in a block that has been returned to a common pool must be ported back to the serving carrier which contributed the block. This is one the many reasons that Ameritech opposes a higher than 10% contamination rate. Ameritech, at 45; Bell South, while agreeing to a 10% level Afor the sake of forward progress,≡ asserts that only uncontaminated blocks should be pooled. BellSouth, at footnote 23, page 8.

The FCC's proposal for cost recovery met opposition for differing reasons. MCI WorldCom and AT&T oppose the FCC's proposed recovery of the thousands-block pooling costs through ILECs' price cap or rate of return adjustments because, according to them, the recovery mechanism would not be competitively neutral.¹⁰⁸ They contend that although IXCs should pay for thousands-block pooling, any cost recovery mechanism must ensure that IXCs do not pay twice for pooling through increased access charges.¹⁰⁹ MCI WorldCom and Bell Atlantic recommend using the end user charge model of the number portability cost recovery system.¹¹⁰ By contrast, Joint Commenters disagree with any cost recovery system that would require consumers to pay additional rates for thousands-block pooling. Contrary to the viewpoints expressed by many,¹¹¹ the costs of pooling are not exogenous costs that qualify for flow-through to consumers. Instead, these costs are the normal cost of conducting business in an increasingly competitive telecommunications market, and are no different from the magnitude of the costs incurred by the industry and by consumers since 1995 when 111 new area codes were assigned within the US.¹¹² To the best of our knowledge, ILECs have not sought recovery of previous area code splits and overlays through an exogenous cost flow-through in the FCC price cap system, and such efforts have been soundly rejected by state commissions.¹¹³ There is no fundamental difference in the alleged "exogenous" nature of costs as between implementing an area code split or implementing number pooling; both are ordinary and necessary costs of doing business, and neither should qualify for flow-through.

Should the Commission, contrary to the Joint Commenters' recommendation, prescribe a method for carriers to recover thousands-block pooling costs, Joint Commenters concur with MCI WorldCom that the mechanism should be competitively neutral.¹¹⁴ All carriers, including IXCs, CMRS providers and paging firms, benefit from number optimization measures that extend

108. MCI WorldCom, at 55-56; AT&T, at 57.

109. AT&T, at 57.

110. MCI WorldCom, at 55-56; Bell Atlantic, at 2. In fact, Bell Atlantic suggests adding a few cents to the current number portability charge. While Joint Commenters do not know what magnitude a few cents represents, this seems to be an acknowledgment by Bell Atlantic that the cost of implementing thousands-block pooling has been substantially covered by the LNP charge and that minimal additional costs are involved.

111. Ameritech, at 51; USTA, at 11.

112. Includes estimated addition of 31 NPAs in 1999. See North American Numbering Plan Exhaust Study, submitted to NANC by the North American Numbering Plan Administration (NANPA) Lockheed Martin CIS, dated April 22, 1999, at 2-5.

113. Illinois Bell included in its 1996 annual rate filing an exogenous change or AZ factor, to recover the 1995 expenses (approximately \$6 million in) associated with two area code splits in the Chicago area, which the Illinois Commerce Commission denied. ICC Docket No. 96-0172, *Illinois Bell Telephone Company Annual Rate Filing for Noncompetitive Services Under an Alternative Form of Regulation*, Hearing Examiner Proposed Order, May 24, 1996, at 2.

114. MCI WorldCom, at 52-54.

the life of the NANP. It would be entirely unfair and bad policy to impose a fee on recipients of blocks because such a mechanism would penalize the very industry segments that are participating in efforts to improve numbering utilization and reward those segments (CMRS and paging) that are not.

D. Incumbent local exchange carriers overestimate the time to implement thousands-block pooling.

The initial comments address at least two issues relating to the time table for implementing thousands-block pooling. The Joint Commenters concur with many comments that hold that thousands-block pooling should occur in those MSAs where local number portability has been implemented because, pursuant to the LNP deployment schedule, these areas encompass either the 100 largest MSAs or are areas where there has been a specific carrier request for LNP. The largest MSAs and the areas that carriers specifically seek to enter represent the areas where NXX codes are likely to be in greatest demand. Differences of opinion arise concerning (1) whether thousands-block pooling should occur pursuant to a national schedule not unlike the national schedule for LNP deployment, and (2) the period of time necessary to implement thousands-block pooling throughout the country.

MCI WorldCom proposes that the Commission establish a national schedule for pooling and delegate some authority to states to determine Acertain issues associated with pooling≡ in order to Aensure that network activity in the seven NPAC regions is balanced, coordinated, and monitored for potential problems.≡¹¹⁵ MCI WorldCom asserts that establishing pools places a burden on systems, databases, and processes for all providers because of the substantial increase in porting activity that pooling requires.¹¹⁶ Specifically, MCI Worldcom recommends that the Commission limit initial pooling deployment to two NPAs in each of the seven NPAC regions per month, based upon a list, to be provided by state commissions, of the NPAs in their states where they would first want pooling to be deployed. Only after the initial pools have been established, and activity has slowed, does MCI Worldcom recommend that the FCC delegate authority to the states to establish pools in additional NPAs.¹¹⁷

Additional suggestions as to the timing of thousands-block pooling implementation follow a similar pattern. There seems to be a consensus that the top 100 MSAs should be addressed first. A notable exception to this position is that of the States who assert that "deployment should coincide with the availability of LNP." They note that states such as Maine, which are LNP-capable as of August, 1999, should not be hampered in their conservation efforts simply because

115. *Id.*, at 13.

116. *Id.*, at 13.

117. *Id.*, at 14.

there is not a "top 100 MSA" in Maine.¹¹⁸ Joint Commenters agree. All areas that are currently providing LRN LNP should be subject to pooling; there is no reason why this requirement should be limited solely to the top 100 MSAs. In addition, Joint Commenters deem it prudent for the Commission to give states the authority to mandate the implementation of LRN LNP in areas that are *not* currently LNP-capable so that thousand-block pooling can be utilized in those areas. Such measures should only be considered by states *if adoption of thousand-block pooling would result in preventing the need for a new area code*. The technical capabilities exist for LRN LNP to be adopted in all areas: States should therefore have the ability, under special circumstances, to weigh the industry costs associated with implementing LRN LNP with the benefits of number conservation, which would include the avoidance of further societal costs associated with introducing a new area code.

118. States, at 12.

There are varying opinions as to the length of time it will take to implement pooling across the nation ranging from immediate to three years. AT&T asserts that there is no reason why thousands-block pooling could not be implemented immediately in those places that are already LNP-capable.¹¹⁹ Sprint believes that it will take from 10 to 19 months from an FCC order on thousands-block pooling.¹²⁰ Under MCI Worldcom's proposal, apparently pooling would be implemented in 14 NPAs each month over an approximate eight-month period (so that at the end of this phase, pooling would have been implemented in 101 NPAs (assuming one for D.C., two for all others). Some CLECs believe that implementation could start the first quarter of 2000 and be fully implemented within 12 months.¹²¹ The RBOCs, on the other hand, tend to have much longer time estimates, ranging from one and a half years of development and upgrade before implementation can even begin, which then should take at least a year, to the assertion by BellSouth that time estimation is premature given the fact that the industry still needs to "evaluate" thousands-block pooling.¹²²

Joint Commenters believe that thousands-block pooling must be implemented as soon as technically possible given the current state of the NANP. The ILEC position would simply create an *analysis paralysis* that serves only to perpetuate the ILECs' incumbency position and defer the development of effective competition. No additional studies are needed to show that thousands-block pooling is a very effective conservation mechanism. Again, the implementation of LRN LNP was the most costly and time consuming part of any implementation of thousands-block pooling; the remaining issues are almost entirely administrative in nature. AT&T concurs with the Joint Commenters' view that the cost is likely less than the ILECs have estimated. In fact, AT&T believes the ILECs have significantly overstated the costs because they should be much lower than was the case for LNP.¹²³ Joint Commenters believe that thousands-block pooling can be rolled-out very quickly in those places where LNP is now implemented.

Finally, Joint Commenters assert that states must be given the ability to go ahead with thousands-block pooling without waiting for what may be a very time-consuming process at the federal level. States face their own varying degree of near-exhaust situations and some cannot wait any longer. The Massachusetts congressional delegation recently sent FCC Chairman Kennard a letter addressing this issue.¹²⁴ In the letter they note that the AFCC Action on its May

119. AT&T, at 32.

120. Sprint, at 16-17.

121. ALTS, at 25.

122. Ameritech estimates a year and a half for development and testing before implementation, Ameritech, at 43; Bell Atlantic estimates 16 months for upgrade to systems and another year to implement. Bell Atlantic, at 25; Bell South calls for an initial phase-in whereby two to three MSAs in each NPAC region would have thousands-block pooling, and then the industry would evaluate the results. BellSouth, at 23.

123. AT&T, at 56.

124. Massachusetts DTE, at Attachment B: A July 20, 1999 Support Letter to Chairman Kennard from U.S. Senators

27, 1999 Notice of Proposed Rulemaking (ANPRM[≡]) will come too late for Massachusetts to avoid the introduction of new area codes. Consequently, we urge you and the FCC to act quickly on some form of interim delegation of authority to Massachusetts while the NPRM is pending.^{≡125} The Joint Commenters certainly concur, and indeed believe that such interim delegation should be made available to all state commissions.

E. The incumbent local exchange carriers exaggerate the difficulties associated with implementing UNP and underestimate the benefits to consumers.

Edward M. Kennedy, John F. Kerry, and Congressmen Barney Frank and Michael E. Capuano.[≡]

125. *Id.*

Joint Commenters are not persuaded by MediaOne's recommendation that the Commission should move cautiously as it contemplates implementing UNP¹²⁶ or by AT&T and NEXTLINK proposals that UNP remain a voluntary process.¹²⁷ Joint Commenters are also not persuaded by the RBOCs' claims that UNP is not a conservation measure and that, according to Ameritech, UNP will create higher demand for numbers and an environment in which carriers avoid other carrier inventories in order to obtain certain desirable numbers.¹²⁸

On the other hand, UNP is an essential component of MCI WorldCom's pooling recommendation. According to MCI WorldCom, AUNP can be implemented prior to pooling, provides substantial competitive benefits and allows access to numbering resources that pooling alone would strand in carrier inventories.¹²⁹ Consumers would benefit from a mechanism whereby all carriers would have a more equitable way to fulfill customer requests for specific numbers. Ultimately, the purpose of having access to numbering resources is so that providers can meet customers' requirements and, to the extent that incumbents' control over a substantial portion of the nation's resources impedes customers' choice of carriers and numbers, then the public interest is not served.

As explained by MCI WorldCom, the first phase of UNP can be implemented immediately using existing systems and resources and would not require the intervention of a third party. The LRN technology is in place, and companies have established processes for porting numbers. UNP would allow greater access to assigned NXX codes and thereby optimize the use of *existing* NXX code assignments. As Joint Commenters discussed in our initial comments, consumers are already paying for LRN even though only a handful (a bit over 1%) of numbers are actually being ported at this time. UNP is an additional benefit of the \$3.7-billion that consumers are paying for LRN LNP that can be made available *now*, and the efforts on the part of the ILECs to delay such implementation should be soundly rejected.

As an aside, the Joint Commenters would draw the Commission's attention to the fact that the vigorous competition in the long distance market results in some 30- to 40-million PIC changes annually. If that same level of competition were to be achieved in the local exchange

126. MediaOne, at 29.

127. AT&T, at 41; NEXTLINK, at 11.

128. Ameritech, at 47; BellSouth, at 9-10; Bell Atlantic, at 3.

129. MCI WorldCom, at 17.

market, within a very short period of time, and even without UNP, a double-digit percentage of numbers in all LNP-capable markets would be ported, perhaps several times over the service life of the customer. *There is no technical difference or distinction between porting of assigned numbers and porting of unassigned numbers.* Given that the ILEC are imposing \$3.7-billion in cost on consumers for LNP, they had better be in the position of accommodating the same level of competition in the local market as is being experienced in long distance; if they claim otherwise, the Commission should immediately find them to be in non-compliance with its LNP orders and should require them to immediately discontinue LNP charges and refund to consumers those that have already been collected. The ILECs' position on UNP, if it has merit at all, constitutes and should be taken as an admission that the ILECs have failed to provide adequate LNP capacity in their systems and are thus not in compliance with the Commission's directives. And if that capacity does exist, then the claims being made as to the difficulties involved in implementing UNP should be afforded "my dog ate my homework" weight.

We concur with the States' position that the FCC should not abandon UNP (or ITN) as they are even more efficient mechanisms than thousands-block pooling. In fact, the States believe that UNP and thousand-block pooling can be used simultaneously.¹³⁰

F. As some have suggested, the FCC should proceed immediately to determine how to expedite the deployment of ITN.

MCI WorldCom contends that the industry needs to assess the costs and benefits of ITN pooling after implementation of other, more quickly achievable measures.¹³¹ Although the Joint Commenters concur with MCI WorldCom that the FCC and state PUCs should first implement those measures that are quickly achievable, Joint Commenters oppose further delay in the examination of the costs and benefits of ITN. Contrary to the implication in MCI WorldCom's comments that the industry should evaluate ITN later, Joint Commenters urge the FCC to begin to evaluate ITN now. Delaying the in-depth examination of ITN until a later date will simply postpone its potential role in preventing NANP exhaust.

G. Regulatory leadership rather than self-selected solutions should prevail.

130. States, at 16.

131. MCI WorldCom, at 16.

Consistent with Joint Commenters's initial comments, most commenters oppose the idea of allowing carriers to select their number optimization methods. Again, the exception to this is a few RBOCs who believe that the Aindustry can manage number optimization measures.¹³² It is, of course, the "industry" that has brought us to the present crisis, and if nothing else is made painfully clear by the initial comments of many "industry" members, there is simply no assurance that solutions that the "industry" would consider to be in its best interests are necessarily consistent with the overall public interest. ILEC resistance to 1,000-block pooling is directly responsible for the ridiculously low utilization rate X 5.7% X exhibited by CLECs, and has no doubt been the single biggest source of NXX exhaust in many, if not most, NPAs.¹³³ Even Bell Atlantic acknowledges the fact that some standards are needed and that the FCC needs to do more than simply set utilization standards.¹³⁴ As MCI WorldCom observes, improving the assignment and utilization of numbering resources requires coordinated efforts of all industry segments and the ACommission must provide the leadership that is needed to achieve such coordination.¹³⁵

Joint Commenters do not dispute the right, indeed the obligation, of the "industry" to *inform* the FCC and state commissions as to specific technical, operational and administrative considerations that bear upon individual numbering solutions. But the "industry" should not be permitted to dictate public policy, nor should the interests of the public at large be automatically subordinated to positions of carriers merely because a specific implementation measure is costly or difficult to implement, or *may* create possible competitive disparities the exact significance of which may be speculative at best.

132. Ameritech, at 44;

133. Number Utilization Forecast and Trends, submitted by NANPA Lockheed Martin CIS, February 12, 1999, at 8.

134. Bell Atlantic, at 37.

135. MCI WorldCom, at 32.

VI. PRICING OPTIONS

A. Numbering resources should not be put up for sale.

Consistent with the comments of many,¹³⁶ the FCC should abandon, or, at a minimum, postpone, its plans to embark upon the sale of number resources because the potential pitfalls of such a plan far outweigh the likely benefits.

Perhaps the biggest difficulty in establishing a pricing mechanism for the purpose of conserving number resources would be in setting a price for the numbers that is both effective in promoting more efficient use of numbers and also competitively neutral. As MCI points out in response to the question of what the price for numbers ought to be, A[t]here is simply no reliable way for a regulator to make this determination.¹³⁷ This price would need to be high enough to cause service providers to use numbers with greater efficiency; however, if the price is too high, it will create a barrier to competitive entry, as CLECs may not have the resources to purchase numbers as easily as incumbents. Additionally, any pricing scheme would need to somehow take into account the stockpiles of numbers that ILECs currently hold. If the ILECs are not somehow forced to pay for the substantial amount of numbers over which they already have control, that increases the ILECs' advantage over new entrants to the market that do not have access to an already sizable reserve of numbers.

Initiating a process of "selling" numbers changes fundamentally the proprietary character of these resources. At the present time, numbers are not "owned" by the customer, and cannot be "sold" by one customer to another. Indeed, the FCC has adopted and enforced specific rules prohibiting trafficking in 800/888/877 toll-free numbers.¹³⁸ However, once carriers are required to pay for numbers and pass those costs on to their own customers, the situation could change. For example, carrier "ownership" of a particular number or block of numbers could undermine the LNP requirement, potentially affording the carrier a legal basis to refuse to permit porting or pooling of a "proprietary" resource. One could also envision situations in which attempts by number administrators to change telephone numbers (e.g., in the case of an area code split) could be resisted on the basis that the preexisting number was acquired in exchange for a cash payment and is therefore property of the carrier or customer. Although one can speculate as to the possibilities in this area, it is clear that the issue requires further study and legal analysis, and

136. MediaOne, at 6; California PUC, at 36; AT&T, at 61; MCI WorldCom, at 48.

137. MCI Worldcom, at 49.

138. See CC Docket 95-155, *Commission's 2nd Report and Order and Further NPRM*, released April 14, 1997.

should certainly not be adopted without full consideration of the potential pitfalls that may well arise.

Another problem with attempting to implement a pricing mechanism, as AT&T points out, is that the FCC lacks the necessary legal authority.¹³⁹ While it is true that the Commission has the authority to auction licenses to use portions of the electromagnetic spectrum, there is no reason to believe this authority extends to numbers. In fact, Congress specifically authorized the Commission to auction licenses to use the electromagnetic spectrum as part of the Omnibus Budget Reconciliation Act of 1993. This act provided the Commission with a power that it did not previously possess. Congress has not similarly acted to give the Commission the power to sell numbers, and there is nothing in either the 1934 or 1996 Acts that authorizes the Commission to impose such charges. Therefore, unless Congress sees fit to grant the Commission the power to sell numbers, the Commission does not appear to have the legal authority to do so.

Implementation of this option would require significant administrative costs which, as the California Public Utilities Commission points out, Acould easily spin out of control.¹⁴⁰ These administrative costs, which would include costs Aassociated with distributing the numbers, monitoring utilization, collecting the license fees, and enforcing the pricing scheme,¹⁴¹ could exceed any benefit that may be achieved through the sale of numbers.

In conclusion, the idea of charging a fee for numbers should be eliminated from the list of potential solutions to the numbering crisis. The lack of a legal basis for instituting this measure, the difficulty in establishing a proper price, the potential anti-competitive side effects, and the potential for extremely high administration costs outweigh the limited potential benefits of this alternative. The Commission would be better served by focusing upon other solutions to the numbering crises.

139. AT&T, at 61.

140. California PUC, at 41.

141. *Id.*, at 41.

VII. AREA CODE RELIEF

A. The FCC should allow state regulators access to service- and technology-specific overlays as a way to provide area code relief.

As many of the initial comments demonstrate, it is important that the states have the ability to adopt appropriate area code relief plans in a timely fashion before a particular NPA goes into jeopardy. In order to allow states the ability to quickly and effectively implement a relief solution, it is essential that the FCC grant them the flexibility to consider and adopt relief plans geared to the needs of their individual situation. This includes permitting states the ability to implement service- and technology-specific overlays.

Wireless carriers contend, throughout their initial comments, that service- or technology-specific overlays are detrimental to competition; short of making such assertions, those opposing this type of relief solution offer no factual support for their position, nor do they demonstrate that the alleged detrimental effect upon wireless carriers' ability to compete with wireline services exceeds the detrimental impact upon CLECs' ability to compete with incumbent LECs under all-services overlays. As the Joint Commenters have shown, competitive disparity exists *if and only if* the service providers in the original and in the overlay codes actually compete directly with one another. At this time, there is no evidence to support the notion that wireless and wireline services are in direct competition, as demand for additional residential access lines is at an all time high and there is no evidence that consumers are actually *substituting* wireless for wireline services to any consequential degree.

Additionally, in virtually every foreign telecommunications market, separate wireless number ranges and area codes are the norm rather than the exception. Indeed, wireless development in these markets often exceeds that found in the US.¹⁴² Countries that have separate service access codes assigned to wireless services include Japan, Australia, Israel, the United Kingdom, Ireland, France and Germany, all of which have flourishing wireless industries. In fact, the UK has been experiencing record growth: All four nationwide wireless operators revealed their January to March quarter subscriber figures showing the highest growth rates in their history.¹⁴³ Clearly

142. *Id.*, at 47; See also CTIA Comments at 8, MCI Comments at 2: Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, *Notice of Inquiry*, 12 FCC Rcd 17693 (1997).

143. *U.K. Wireless Hits Record Growth*, Wireless Week, April 19, 1999, available at www.wirelessweek.com/intl/us419.htm.

this kind of growth in a market that already boasts a penetration rate of 25%¹⁴⁴ is compelling evidence that the wireless industry is not harmed by the existence of service-specific numbering treatment.

144. *Id.*

On the contrary, as the California PUC points out, failing to provide for a separate area code for wireless may be discriminatory in favor of the wireless providers and against wireline.¹⁴⁵ The FCC has granted a CTIA petition giving CMRS providers the right to defer until mid-2002 implementation of LNP. Since pooling requires LNP, and the wireless industry is not LNP-capable, the wireless industry would not be able to participate in pooling. As a result, while other, LNP-capable providers could only pull numbers in blocks of 1,000, wireless carriers would be able to pull numbers in blocks of 10,000. This would be a situation that would clearly be competitively advantageous for the wireless industry, unless a separate wireless area code were adopted.

Moreover, and as the Commission has recognized both in this NPRM and in the concurrent NPRM in WT Docket 97-207 dealing with wireless calling party pays services, the use of a special service area code may be necessary to identify calls to which additional calling party charges are to apply.¹⁴⁶ But whether or not the Commission proceeds with wireless calling party pays, the use of special overlay area codes for non-LNP-capable service providers would be an important number resource optimization tool that would help to inoculate wireline consumers from the special treatment that has been afforded wireless carriers with respect to LNP.

Many commenters express concern over the possibility of service- or technology-specific overlays having the potential for stranding a large volume of numbers in area codes that are not fully utilized by the particular technology, while existing codes continue to be strained. Considering the current rapid growth of the wireless market, it seems unlikely that the new overlays will experience such low utilization rates as to be a problem. With states having an option to use service- and technology-specific overlays as a means to alleviate the strain on numbering resources, it could be used in situations where it is an effective option, and where there is an existing demand for the specific service designated for the overlay. It is unlikely that states will establish an overlay that will not be expected to provide relief, and that would only absorb a small quantity of numbers. Even under the worst case scenario, if service- or technology-specific overlays were implemented and result in inefficient use of an area code because the majority of the numbers are unused, the code could be expanded to include other regions, or opened up at anytime to include standard wireline service. Certainly, this concern is not one that should deter the FCC from establishing technology- and service-specific overlays as an alternative available to states to ease the strain on numbering resources.

145. California PUC, at 46.

146. Notice, at 257; *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, June 10, 1999, at & 41.

Another concern of commenters is the costs involved if a *Atake-back* of numbers is necessary due to a service-specific overlay.¹⁴⁷ The issue is the cost of reprogramming wireless handsets in the event of changes in the 7-digit telephone number that may occur in the assignment to a new NPA. While certainly there would be costs involved for wireless companies in the changeover to a new NPA, wireless companies are not unique in this regard. There are costs for any service provider as well as for consumers and society as a whole when faced with changing telephone numbers. The wireless carriers have failed to demonstrate that the costs they would confront to change wireless numbers are consequentially greater than the costs that wireline carriers and their customers incur when an area code is split. Indeed, with many digital wireless phones having the capability of being reprogrammed remotely (i.e., over the air), and with virtually all wireless phones being capable of being programmed by the user with telephonic assistance from a customer service representative of the carrier, the actual costs involved in changing CMRS phone numbers may well border on the inconsequential. And for pagers, where the telephone number normally does not even reside in the pager because the translation between the telephone number and the electronic serial number takes place at the paging carrier's central office, the costs of changing numbers is for all practical purposes zero.

In conclusion, there are no compelling arguments that should prevent the FCC from making technology- and service-specific overlays available to the state as a means to lessen the burden on numbering resources. Additionally, there are a number of reasons why the technology- and service-specific overlays could be a viable option for expanding numbering resources, that would have benefits to the FCC itself, as well as the public that it serves.

147. AT&T Comments, at 69.

VIII. CONCLUSION

Nearly eighteen months have elapsed since the Commission asked the NANC to create the NROWG to address and make specific recommendations on possible measures to protect and preserve this vital national resource. In the intervening period, some 36 additional NPAs have been cut into service, and another 4 codes are scheduled to be opened before the end of the year.¹⁴⁸ At least 22 states have been confronted with area code relief issues over this period of time.¹⁴⁹ This Commission has received not less than seven petitions from state commissions seeking authority to pursue one or more measures that, heretofore, the Commission has declined to allow.¹⁵⁰ If this proceeding follows the normal pleading/decisionmaking cycle, it may be many months before the matters being addressed here are resolved X if in fact they are resolved X and many more months before the rules that are adopted here can be implemented by the states.

This continued complacency undermines the scope of options that will ultimately be available to solve the nation's numbering crisis; unfortunately, the continued delay in reaching a final decision happens to benefit certain stakeholders while injuring others and the nation as a whole. The Commission needs to act, and to do so decisively and *soon*. Previous rulings that have benefitted certain specific interests must now be revisited and revised to address broader public interest concerns. The ban on service-specific overlays benefits only the wireless industry, and even the actual extent of that "benefit" is dubious at best; the 10-digit dialing requirement for all-services overlays does not overcome the incumbents' advantages in the preexisting area code; prohibitions and delays in implementing pooling benefit only incumbent LECs. While preserving competitive parity and neutrality is certainly an important goal, it cannot and should not be subordinated to the broader public interest, and consumers should not and must not be subjected to changes in numbers and dialing patterns *merely and solely for the purpose of maintaining such competitive parity*.

The Joint Commenters urge the Commission to act quickly to address and rule on the matters raised in this Notice, and to extend to the states the authority to take such actions as they deem necessary and appropriate to best protect the interests of their residents and businesses, limited only by a requirement that states cannot fundamentally undermine the integrity of the public telecommunications network or the North American Numbering Plan.

148. Number Resource Information, NPA Relief Activities, assignments as of July 29, 1999, available at www.nanpa.com/number_resource_info/assignments.html.

149. *Id.*

150. Notice, at §§ 244-245.

Reply Comments of the Texas Office of Public Counsel and NASUCA

Respectfully submitted,

Rick Guzman
Texas Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78701
(512) 936-7500/(512) 9367520 FAX

Economic consultants:

Lee L. Selwyn	Michael Travieso
Susan M. Baldwin	Chair, Telecommunications Committee
Economics and Technology, Inc.	NASUCA
One Washington Mall	1133 15th Street, N.W., Suite 550
Boston, MA 02108	Washington, D.C. 20005
(617) 227-0900/(617) 227-5535 FAX	(202) 727-3908/(202) 727-3911 FAX

August 30, 1999